

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

**ATTORNEYS AT LAW**

**RALEIGH, NORTH CAROLINA**

**MAILING ADDRESS**

**POST OFFICE BOX 1800  
RALEIGH, N.C. 27602**

**OFFICE ADDRESS**

**1600 WACHOVIA CAPITOL CENTER  
150 FAYETTEVILLE STREET MALL  
RALEIGH, N.C. 27601**

**TELEPHONE (919) 839-0300  
FACSIMILE (919) 839-0304**

**WWW.BROOKSPIERCE.COM**

L.P. McLENDON, JR.  
EDGAR B. FISHER, JR.  
W. ERWIN FULLER, JR.  
JAMES T. WILLIAMS, JR.  
WADE H. HARGROVE  
M. DANIEL MCGINN  
MICHAEL D. MEEKER  
WILLIAM G. MCNAIRY  
EDWARD C. WINSLOW III  
HOWARD L. WILLIAMS  
GEORGE W. HOUSE  
WILLIAM P.H. CARY  
REID L. PHILLIPS  
ROBERT A. SINGER  
JOHN H. SMALL  
RANDALL A. UNDERWOOD  
S. LEIGH RODENBOUGH IV  
MARK J. PRAK  
JILL R. WILSON  
MARC D. BISHOP  
JIM W. PHILLIPS, JR.  
MACK SPERLING  
JEFFREY E. OLEJNIK  
MARK DAVIDSON  
JOHN W. ORMAND III  
ROBERT J. KING III  
V. RANDALL TINSLEY  
S. KYLE WOOSLEY  
FORREST W. CAMPBELL, JR.  
MARCUS W. TRATHEN  
JEAN C. BROOKS  
JAMES C. ADAMS II  
ALLISON M. GRIMM  
ELIZABETH S. BREWINGTON  
H. ARTHUR BOLICK II  
J. EDWIN TURLINGTON  
JOHN M. CROSS, JR.

JENNIFER K. VAN ZANT  
DAVID W. SAR  
BRIAN J. McMILLAN  
NATALIE KAY SANDERS  
DAVID KUSHNER  
DEREK J. ALLEN  
CLINTON R. PINYAN  
TERESA DeLOATCH BRYANT  
COE W. RAMSEY  
ROBERT W. SAUNDERS  
ELIZABETH V. LaFOLLETTE  
GINGER S. SHIELDS  
JENNIFER T. HARROD  
CHARLES E. COBLE  
JOHN M. DeANGELIS  
KATHRYN V. PURDOM  
STEPHEN G. HARTZELL  
JESSICA M. MARLIES  
ANDREW J. HAILE  
CHARLES F. MARSHALL III  
J. BENJAMIN DAVIS  
CAROLINE RITCHIE HEIL  
KATHERINE A. MURPHY  
SARA R. VIZITHUM  
C. SCOTT MEYERS  
JOHN S. BUFORD  
NICOLE A. CRAWFORD  
ALEXANDER ELKAN  
C. ROBIN BRITT, JR.  
PATRICK J. JOHNSON  
KATHERINE J. CLAYTON  
JENNIFER A. GALASSI  
KATHLEEN A. GLEASON  
JANICE L. KOPEC  
SUSAN M. YOUNG  
DARRELL A. FRUTH

**HENRY E. FRYE  
OF COUNSEL**

**J. LEE LLOYD  
SPECIAL COUNSEL**

**FOUNDED 1897**

AUBREY L. BROOKS (1872-1958)  
W.H. HOLDERNESS (1904-1965)  
L.P. McLENDON (1890-1968)  
KENNETH M. BRIM (1898-1974)  
C.T. LEONARD, JR. (1929-1983)  
CLAUDE C. PIERCE (1913-1988)  
THORNTON H. BROOKS (1912-1988)  
G. NEIL DANIELS (1911-1997)  
HUBERT HUMPHREY (1928-2003)

**GREENSBORO OFFICE  
2000 RENAISSANCE PLAZA  
230 NORTH ELM STREET  
GREENSBORO, N.C. 27401**

**WASHINGTON OFFICE  
601 PENNSYLVANIA AVENUE, N.W.  
SUITE 900, SOUTH BUILDING  
WASHINGTON, D.C. 20004**

**WRITER'S DIRECT DIAL**



November 29, 2005

**Via Overnight Mail and ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**Re: WDSU-DT, New Orleans, Louisiana  
MB Docket No. 05-317  
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of New Orleans Hearst-Argyle Television, Inc. ("Hearst-Argyle"), permittee of Digital Television Station WDSU-DT, New Orleans, Louisiana, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WDSU-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WDSU-DT is the NBC affiliate located in the New Orleans Designated Market Area ("DMA"). The New Orleans DMA is ranked 43rd among Nielsen Media's 210 television markets for the 2005-2006 television season. WDSU-DT has received a tentative digital channel designation

of Channel 43, which is WDSU-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WDSU-DT.

Pursuant to Section 339(a)(2)(D)(viii) of the Act, Hearst-Argyle requests a waiver on two bases: (1) the station has experienced a "force majeure" event (**Section 339(a)(2)(D)(viii)(III)**), and, notwithstanding the force majeure event, (2) WDSU-DT would experience "a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna" (**Section 339(a)(2)(D)(viii)(IV)**).

WDSU-DT is currently off the air due to damage sustained from Hurricane Katrina. The hurricane damaged several items of WDSU's NTSC and DTV transmitting equipment. While WDSU has only recently resumed NTSC operation pursuant to Special Temporary Authority, WDSU-DT is in the preliminary stages of its DTV restoration plans. On September 15, 2005, the Commission granted WDSU-DT authority to remain silent (File No. BLSTA-20050908ADQ) due to Hurricane Katrina.

Prior to the force majeure event of Hurricane Katrina, WDSU-DT's DTV facility was operated pursuant to Program Test Authority during the pendency of its DTV license application in FCC File Number BLCDT-20050620ADP. As certified in its Form 381 filing (File No. BCERCT-20041105ABG), WDSU-DT intends to operate its post-transition DTV station based on its allotted replication facilities. WDSU-DT's authorized facility is for maximum permissible power at a lower HAAT with a side-mounted antenna. As previously explained to the Commission in WDSU-DT's request for waiver of the replication deadline filed on July 1, 2005, it is physically impossible for WDSU-DT to construct its DTV top-mount replication facility at its allotted height until the NTSC top-mount WDSU-TV antenna is removed at the end of the DTV transition.

Assuming WDSU-DT will be able to restore its DTV operation to its currently authorized facility, such operation would still result in a substantial decrease in its digital signal coverage area compared to its future replication facility. As previously submitted to the Commission, WDSU-DT's authorized facility is predicted to provide service to 1,686,068 people, while its future replication operation is predicted to provide service to 1,803,376 people. *See* Hearst-Argyle Supplement to Replication Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, WDSU-DT is in jeopardy of losing service to all 1.8 million people who are predicted to receive service from the station but who may otherwise be eligible to receive service from a distant network affiliate, and, even when WDSU-DT resumes operation with its side-mounted antenna, WDSU-DT will still be in jeopardy of losing service to 117,308 people who may otherwise be eligible to receive service from a distant network affiliate.

Ms. Marlene H. Dortch

November 29, 2005

Page 3

Furthermore, were WDSU-DT to proceed with construction of its replication facility before the end of the DTV transition, Hearst-Argyle would have to expend considerable resources to move its NTSC antenna to a lower level on the tower to make room for its DTV antenna. These costs, which would include the cost of purchasing an NTSC side-mount antenna, installation, and reworking the transmission line, would be "sunk costs" in equipment and labor that will only be useful until the DTV transition is complete. In addition, completion of WDSU-DT's replication facility before the end of the DTV transition would require Hearst-Argyle to lower WDSU-TV's NTSC antenna, resulting in a loss of NTSC service to approximately 100,000 people. *See id.*

Accordingly, because WDSU-DT is currently off the air due to the force majeure event of Hurricane Katrina, because its authorize facility would experience a substantial decrease of 117,308 people in its digital signal coverage area due to the present side-mount installation of its DTV antenna, and because construction of its replication facility prior to the end of the DTV transition would result in a substantial loss of NTSC service, WDSU-DT satisfies two of the waiver criteria of Section 339(a)(2)(D)(viii) of the Act.

For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.



David Kushner  
Coe W. Ramsey  
Counsel to New Orleans  
Hearst-Argyle Television, Inc.

cc: Via Hand-Delivery  
Nazifa Sawez  
Federal Communications Commission  
Room 2-A726  
445 12th Street, S.W.  
Washington, DC 20554